

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE**

**U.S. EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,**

Plaintiff,

v.

PARTY CITY CORPORATION,

Defendant.

**CIVIL ACTION NO.
1:18-cv-00838-PB**

CONSENT DECREE

This cause of action was initiated on September 18, 2018, by the Equal Employment Opportunity Commission (“EEOC” or “the Commission”), an agency of the United States Government, alleging that Defendant Party City Corporation (“Party City”) engaged in unlawful employment practices in violation of Titles I and V of the Americans with Disabilities Act of 1990 (“ADA”) and Title I of the Civil Rights Act of 1991. Specifically, EEOC alleges that Party City violated the ADA by failing to hire Ashley Waxman because of her disability, in violation of the ADA.

The parties desire to settle this action amicably and to stipulate to the entry of this Decree as final and binding between them and Party City’s parent organizations, officers, directors, agents, successors, assigns, full or partial purchasers, subsidiaries, affiliates, and any other corporation, unit, or other entity with which Party City may merge or consolidate.

In consideration of the mutual promises of each party to this Decree, the sufficiency of which is hereby acknowledged, the parties agree as follows, the Court finds appropriate, and it is therefore ORDERED, ADJUDGED AND DECREED that:

A. GENERAL PROVISIONS

1. This Decree resolves all matters related to Civil Action No. 1:18-cv-838. This Consent Decree also resolves the issues raised in EEOC Charge Number 524-2018-00573 (“the Charge”), which served as the jurisdictional prerequisite in this case. This Consent Decree does not resolve any other charge of discrimination currently pending before EEOC, or any charge that may be filed in the future, other than the Charge. EEOC reserves all rights to proceed with the investigation and/or litigation of any other charges and claims, including but not limited to, the investigation and litigation of any pending or future charges or claims against Party City. It is understood that this Consent Decree is limited to the matter before this Court and cannot be used in or relied upon as precedent in any other matter brought by the EEOC that does not address a claim under the ADA.

2. The terms of this Decree represent the full and complete agreement of the parties.

3. The Court has jurisdiction of the subject matter of this action and over the parties, venue is proper, and all administrative prerequisites have been met.

4. The parties have agreed that this Decree may be entered into without findings of fact and conclusions of law having been made and entered by the Court.

5. Party City shall not contest the validity of this Consent Decree, or the jurisdiction of the United States District Court to enforce this Consent Decree and its terms, or the right of EEOC to bring an enforcement action or proceeding upon the breach of any term of this Consent Decree by Party City.

6. The terms of this Decree are adequate, fair, reasonable, equitable, and just. The rights of the Parties and the public interest are adequately protected by this Decree.

7. The terms of this Decree are and shall be binding upon the present and future subsidiaries, representatives, agents, directors, officers, successors and assigns of Defendant.

8. This Decree is being issued with the consent of the parties and does not constitute an adjudication or finding by this Court on the merits of the allegations of the Complaint. Party City specifically denies the allegations in the Complaint. Nothing contained in this Decree shall be construed as an admission of liability on the part of Party City.

9. The Effective Date of this Decree (the “Effective Date”) shall be the date this Decree is docketed by the clerk of court after it is signed and/or receives approval from the Court.

B. INJUNCTION

10. The provisions of this Consent Decree applicable to Party City shall include all Party City’s officers, managers, agents, successors, assigns, full or partial purchasers, subsidiaries, affiliates and any other corporation or other entity into which Party City may merge, or consolidate or otherwise become affiliated with.

11. Party City is enjoined from discriminating against qualified job applicants who require a job coach as a reasonable accommodation of their disability under the ADA.

12. Party City is enjoined from retaliating against any person because of opposition to the acts alleged in the Charge or the Complaint, because of the filing of the Charge, giving of testimony or assistance with respect to the Charge or the Complaint, or participation in any manner with respect to the Charge or the Complaint.

C. POLICIES AND PROCEDURES

13. Party City agrees to review and revise its Reasonable Accommodation Policy and Complaint Procedures. A copy of the revised Policies is attached hereto as Attachment A to this

Decree. In addition, Party City will continue its current practice of advising applicants via a notice on the electronic applicant portal to email CandidateSupport@partycity.com if they are in need of assistance in completing the application process.

14. Within thirty (30) days after the Effective Date, the written policy shall either be posted in prominent locations frequented by employees in Party City stores nationally or emailed to all employees and made available to each current employee as part of Party City's Employee Handbook. The written policy shall be distributed to all new employees when hired. This policy will be included in any relevant policy or employee manuals kept by Party City or any internal company website containing information accessible to employees.

D. NOTICES AND POSTINGS

15. Within thirty (30) days after the Effective Date, Party City shall post at its worksites in Vermont, New Hampshire, Maine and the specific stores in Massachusetts as set forth in Attachment B ("Geographic Region"), in a conspicuous place frequented by its employees, an eleven (11) inches by fourteen (14) inches laminated copy of the Notice attached as Attachment C to this Decree. The Notice shall remain posted for the duration of this Decree. If the Notice becomes defaced or illegible, Party City will replace it with a clean copy. Party City shall certify to the Commission, in writing, within forty-five (45) days of the Effective Date that the Notice has been properly posted. Party City shall provide recertification in each of the semi-annual reports required under the Reporting provisions of this Decree.

E. TRAINING

16. Within 30 days of the Effective Date, Party City will inform all Human Resource employees and all supervisors and managers who have responsibility for hiring in the

Geographic Region of the changes to Party City's policy made by this decree. Party City shall certify compliance with this provision to EEOC within 45 days of the entry of this decree.

17. Within three months of the Effective Date, Party City shall provide one hour of training to all managers with hiring authority in the Geographic Region on the proper handling of interviews of applicants who need accommodations, including those applicants who have job coaches and on the proper interaction with the job coach and applicant if the applicant is hired. All employees who receive hiring authority in the Geographic Region during the term of this Decree shall receive this training upon their promotion. In addition, within three months of the Effective Date, Party City shall review with Jim Ryan, Human Resources District Manager, Party City's policy on the handling of complaints.

18. In addition, within three months of the Effective Date, Party City shall provide written notice to all managers of the company with hiring authority that, prior to rejecting an applicant who has a job coach, they must reach out to a member of the Human Resources team.

F. MONETARY RELIEF

19. As part of the settlement of this action, within twenty-one (21) days of the Effective Date and the receipt by Party City of a Release of Claims executed by Ashley Waxman, whichever is later, Party City will pay the total sum of \$155,000.00, in a check made payable to the "Irrevocable Special Needs Trust of Ashley Waxman," for alleged compensatory damages.

20. Party City shall issue a Form 1099 for the payment. Party City will send the check for the above amount via certified mail, FedEx, or UPS, to an address provided by EEOC. Party City will provide a copy of the check to EEOC immediately upon issuance.

G. MONITORING AND REPORTING

21. Party City shall furnish to EEOC written Reports twice annually for the duration of this Decree. The first Report shall be due six (6) months after the Effective Date and thereafter by June 30, and December 30, annually. Each such Report shall contain:

- (a) A certification that Party City is using the revised policy described in Paragraph 13 above;
- (b) A certification that the Notice required to be posted in Paragraph 15, above, remained posted and visible during the entire six (6) month period preceding the Report;
- (c) A certification that the Training required by Paragraph 17 has taken place;
- (d) A certification that the Notice required by paragraph 18 has been given, along with a copy of the written notice provided; and
- (e) A list of all applicants with job coaches not hired nationally during the reporting period, including the name and contact information of the applicants.

22. EEOC may review compliance with the provisions of this Decree.

23. As part of such review, if appropriate and only after providing Party City prior notice of any claimed deficiency and opportunity to address and/or cure, EEOC may inspect Party City's facilities in the Geographic Region, including interview employees, and examine and copy documents at a mutually convenient time as agreed upon between EEOC and Party City. Party City will make all non-managerial employees in the Geographic Region available to EEOC, and shall permit such employees to speak confidentially with EEOC for the purposes of verifying compliance with this Decree. Managerial employees in the Geographic Region will similarly be made available but Party City reserves the right to have counsel present at any such meeting. Such inspections, under the same conditions, may be made outside of the Geographic Region to verify compliance with Paragraph 11 of the Decree.

24. Except as otherwise provided for in this Decree, all notifications, reports, and communications to the parties required under this Decree will be made in writing and will be sufficient as emailed or mailed to the following persons (or their designated successors):

For EEOC: Consent Decree Monitor
EEOC Legal Unit
33 Whitehall Street, 5th Floor
New York, NY 10004
Decreemonitor.nydo@eeoc.gov

and

Markus Penzel, Senior Trial Attorney
EEOC – Boston Area Office
JFK Federal Building, Room 475
Boston, MA 02203
markus.penzel@eeoc.gov

For Party City: Joseph J. Zepf, Esq.
Executive Vice President, General Counsel & Secretary
Party City Holdings Inc.
80 Grasslands Road
Elmsford, NY 10523

H. DISPUTE RESOLUTION

25. In the event that EEOC believes that Party City has failed to comply with any provision(s) of the Decree, EEOC will notify Party City and Party City must make a good faith attempt to cure any breach of the Decree within twenty-one (21) business days of notification.

26. Following the twenty-one (21) business days to cure period, EEOC shall have the right to seek Court intervention if, in its opinion, the breach has not been cured.

27. No party shall contest the Court's jurisdiction to enforce this Decree and its terms or the right of EEOC to bring an enforcement suit upon breach of any term of this Decree. Breach of any term of this Decree should be deemed to be a substantive breach of this Decree.

The Court will retain jurisdiction over any such enforcement proceeding during the duration of the Consent Decree. Nothing in this Decree will be construed to preclude EEOC from bringing proceedings to enforce this Decree in the event that Party City fails to perform any of the promises or representations herein.

I. COSTS

28. Each party to this Decree shall bear its own attorneys' fees and costs associated with this litigation.

J. NOTIFICATION OF SUCCESSORS

29. Party City shall provide prior written notice to any potential purchaser of its business, or a purchaser of all or a portion of Defendant's assets, and to any other potential successor, of the EEOC's Complaint, and the existence and contents of the Decree.

K. DURATION OF DECREE

30. The duration of the Decree shall be in effect for a period of three (3) years from the Execution Date, unless there is an open dispute under paragraph 25, in which case the Decree shall be extended until the dispute is resolved.

31. EEOC has the ability to enforce the terms of this Decree as to any alleged breaches to which EEOC has notified Party City in writing not less than thirty (30) days before the expiration of this Decree.

32. The Court retains jurisdiction over this action during the duration of this Decree. The matter may be administratively closed but will not be dismissed during the duration of this Decree.

SO ORDERED, ADJUDGED, AND DECREED

Dated: April 22, 2019

Hon. /s/ Paul Barbadoro
U.S. District Court Judge Paul Barbadoro

FOR PLAINTIFF EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

/s Jeffrey Burstein
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FOR PARTY CITY CORPORATION

DOWNNS RACHLIN MARTIN PLLC

/s Elizabeth K. Rattigan
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Telephone: (603) 448-2211

AND,

FOX ROTHSCHILD LLP

/s Heather R. Boshak

Heather R. Boshak

Admitted Pro hac vice

49 Market Street

Morristown, New Jersey 07960-5122

Telephone: (973) 992-4800

ATTACHMENT A

Reasonable Accommodations

Consistent with its obligations under the Americans with Disabilities Act and similar state laws, the Company is committed to providing equal employment opportunities to otherwise qualified individuals with disabilities, which may include providing reasonable accommodation where appropriate, unless doing so would cause undue hardship. It is the Company's policy not to discriminate against any qualified employee or applicant with regard to any terms or conditions of employment because of such individual's disability or perceived disability so long as the employee can perform the essential functions of the job.

Consistent with this policy of nondiscrimination, if a job applicant or an employee with a disability requests a reasonable accommodation, the Company will work with that individual to determine whether a reasonable accommodation can be made to enable the individual to apply for the job or perform the essential functions of the job and enjoy equal benefits and privileges of employment, provided that such accommodation does not constitute an undue hardship on the Company. Some examples of such accommodations could include a part-time or modified schedule, acquiring or modifying equipment, a leave of absence, the use of a job coach, job restructuring, reassignment etc.

If you have a disability that prevents successful completion of required tasks, the Company encourages you to request an accommodation. All requests for an accommodation will be evaluated on a case-by-case basis to determine whether the Company can assist you in performing the essential functions of the position without creating undue hardship on the Company. The Company has a right to ask for written documentation from an appropriate medical provider in connection with a request for an accommodation or in the event the circumstances so justify, like in the event of an employee's prolonged absence. The employee's failure to provide the requested information could result in denial of an accommodation.

Requests for reasonable accommodations should be made to the Store Manager or a Corporate Human Resources Representative.

Any Associate who believes he/she is being, or has been, discriminated against due to his/her disability should bring the situation to the attention of their Manager or Supervisor or Human Resources as outlined in the Complaint Procedure above.

Complaint Procedure

Any Associate who believes that he/she is being, or has been, harassed, discriminated against or otherwise subjected to inappropriate conduct by a Supervisor, Co-worker, Vendor, Client or anyone else associated with Party City should be aware of the following:

It is suggested that an Associate who believes he/she is the victim of or who has witnessed inappropriate behavior brings the situation to the attention of their Manager or Supervisor

Alternatively, if the Associate is not comfortable bringing the situation to either of these individuals, he/she should bring the situation directly to the attention of the Regional Human Resources Manager or the Director of Human Resources.

- Another alternate method of voicing any harassment issues is to access the confidential Hotline (1-888-270-5937 or <https://www.reportlineweb.com/partycity>).

- Under no circumstances does an Associate need to report the harassment or discrimination to the person whom he/she is accusing of inappropriate behavior.

Investigation and Resolution of Complaints

Party City will provide a timely response to all complaints received. All incidents of harassment that are reported will be investigated via an impartial and timely investigation by qualified personnel. The investigation may include individual interviews with the parties involved and, where necessary, with individuals who may have observed the alleged conduct or may have other relevant knowledge.

While every effort will be made to conduct the investigation in a manner designed to protect the privacy of the persons involved, confidentiality can only be maintained to the extent consistent with adequate investigation and appropriate corrective action. All persons involved, including complainants, witnesses and alleged harassers will be accorded due process to protect their rights to a fair and impartial investigation. Any associates may be required to cooperate as needed in an investigation of suspected harassment. Associates may also be asked to produce documents, including emails and text messages as part of the investigation.

Party City will prepare documentation and tracking for reasonable progress, and will provide timely closures. Reasonable conclusions will be reached based on the evidence collected. Party City will endeavor to protect the privacy and confidentiality of all parties involved to the extent consistent with a thorough investigation, but the investigation may not be completely confidential.

If Party City determines that harassment or discrimination has occurred, the company will take timely remedial action and resolutions commensurate with the circumstances. Appropriate action will also be taken to deter any future harassment. If a complaint of harassment is substantiated, appropriate disciplinary action, up to and including discharge, will be taken. If the complaining party's allegations of discriminatory conduct or harassment are not substantiated, the complainant will be notified and the Company will take action appropriate to ensure a safe and respectful working environment for all parties.

Party City will not tolerate any form of discrimination or harassment of anyone, by anyone.

Additionally, Party City also will not tolerate or permit any Associate to suffer retaliation of any kind or to suffer any adverse employment action as a result of reporting a harassment or discrimination claim or seeking a reasonable accommodation. Any Associate who feels that he/she has been subjected to any acts of retaliation for reporting any perceived acts of harassment or discrimination, or requesting a reasonable accommodation should follow the complaint procedure above.

ATTACHMENT B**Stores covered in the Geographic Region**

Party City #900	380 Lafayette Road	Building 1 Unit 6	Seabrook	NH	03874
Party City #904	215 Dorset Street		South Burlington	VT	05403
Party City #6019	220 Maine Mall Rd.		South Portland	ME	04106
Party City #6034	288 Chelmsford Street		Chelmsford	MA	01824
Party City #6042	1051 S Willow St		Manchester	NH	03103
Party City #6044	2064 Woodbury Ave.		Newington	NH	03801
Party City #6047	261 Daniel Webster Hwy		Nashua	NH	03060
Party City #6050	33 Stephen King Dr.	The Marketplace at Augusta	Augusta	ME	04330
Party City #6052	22 Watertower Plaza	Space # 3D	Leominster	MA	01453
Party City #6066	480 Stillwater Ave	Suite C	Bangor	ME	04401
Party City #6068	300 Andover St		Peabody	MA	01960
Party City #6072	4 Plaistow Road	State Line Plaza	Plaistow	NH	03865

ATTACHMENT C

NOTICE

1. This notice to all Party City Corporation employees in New Hampshire, Vermont, Maine and certain Massachusetts stores is being posted and provided as part of a Consent Decree resolving a lawsuit under the Americans with Disabilities Act (“ADA”) between Party City Corporation (hereafter “Party City”), as Defendant, and the U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, as Plaintiff, regarding the use of job coaches during the application process. As part of the resolution of this matter, Party City recognizes its obligation not to discriminate on the basis of disability and its obligation to provide disabled employees with reasonable accommodations when required, including the use of a job coach.
2. As part of the resolution of this matter, Party City has also agreed to a monetary resolution with a former applicant and to revise its policies and training regarding applicants for employment by individuals with disabilities who require job coaches as a reasonable accommodation.
3. Federal law requires that there be no discrimination against any employee or applicant for employment because of sex, race, national origin, color, religion, age, or disability. Employees are also protected from retaliation for complaining about unlawful discrimination or for otherwise opposing unlawful discriminatory conduct.
4. Party City will comply with such Federal law in all aspects, and it will not take any action against employees because they have exercised their rights under the law by filing charges or cooperating with the U.S. Equal Employment Opportunity Commission or by otherwise opposing employment practices made unlawful under Title VII of the Civil Rights Act of 1964, as amended, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Equal Pay Act, or the Genetic Information Nondiscrimination Act.
5. The Equal Employment Opportunity Commission maintains offices throughout the United States. Its toll-free telephone number is 1-800-669-4000.

SIGNED this ____ day of _____, 2019.

CHIEF EXECUTIVE OFFICER

THIS NOTICE SHALL REMAIN POSTED UNTIL _____, AND SHALL NOT BE DEFACED OR OBSTRUCTED.